Human Rights

SUMMARY OR ARBITRARY EXECUTIONS

Fact Sheet No. 11

World Campaign for Human Rights

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Introduction

"Everyone has the right to life, liberty and security of person."

(*Universal Declaration of Human Rights*)

"No one shall be arbitrarily deprived of his life."

(*International Covenant on Civil and Political Rights*)

What human right could be more fundamental or deserve greater respect than the right to life? It has been stated that "it is the most important and basic of human rights. It is the fountain from which all human rights spring." Article 3 of the Universal Declaration of Human Rights specifically states that "Everyone has the right to life . . .".

The concern of the international community to promote and protect the most elementary and obvious of human rights has been sharpened in recent years by the realization that disregard for human life is widespread and menacing the very core of civilized human society. It is no longer a matter exclusively within the domestic jurisdiction of a State, but a matter of international concern. In this connection, it should be pointed out that the General Assembly adopted in 1989 the Second Optional Protocol to the International Covenant on Civil and Political Rights on the elimination of the death penalty.

Twenty years ago, the United Nations General Assembly saw the defence of the right to life mainly in terms of legally imposed capital punishment. In resolution 2993 (XXIII) of 26 November 1968, the General Assembly invited Governments to ensure that in countries where the death penalty could be imposed, persons accused of capital crimes were given the benefit of the most careful legal procedures and the greatest possible safeguards.

In 1980, the situation further evolved: The spotlight was turned on political killings—within and outside the framework of the law—at the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders which took place in Caracas, Venezuela. The Congress condemned "the practice of killing and executing political opponents or suspected offenders carried out by armed forces, law enforcement or other governmental agencies or by paramilitary or

political groups" acting with the support, tacit or otherwise, of official forces or agencies.

The General Assembly, alarmed at the incidence of summary and arbitrary executions in many parts of the world,[1] recognized the phenomenon of politically-motivated killings, and urged Member States to respect, as a minimum standard, the content of the provisions of articles 6, 14 and 15 of the International Covenant on Civil and Political Rights which cover the right to life and various safeguards guaranteeing fair and impartial judicial proceedings.

In the case of death sentences, the General Assembly asked Member States to consider making appeal procedures automatic, as well as to look at the possibilities of amnesty, pardon or commutation. A death sentence should not be carried out until the procedures of appeal and pardon had been terminated, and in any case not until a reasonable time after the passing of sentence.

As an increasing number of incidents of politically-motivated executions and killings were reported, the Sub-Commission on Prevention of Discrimination and Protection of Minorities[2] which had until the beginning of the 1980s linked summary executions with the practice of enforced or involuntary disappearances decided to treat the former as a separate issue and brought its concern before the Commission on Human Rights in 1982.

The appointment of a Special Rapporteur

An important development which showed and reflected the concern of the international community at the abhorrent practice of summary or arbitrary execution was when the Economic and Social Council in resolution 1982/35 of 7 May 1982 asked the Chairman of the Commission on Human Rights to appoint a person of recognized inter-

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[1] General Assembly resolution 35/172 of 15 December 1980.

[2] Established by the Commission on Human Rights in 1946 to undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities. The Sub-Commission has 26 members who serve in their personal capacity.

national standing as a Special Rapporteur "to examine the question related to summary or arbitrary executions". It was to be the first appointment by the United Nations of a person to study a particular type of violation of human rights on a worldwide basis.

Mr. S. Amos Wako, a Kenyan lawyer and human rights authority, was appointed Special Rapporteur on Summary or Arbitrary Executions in 1982. His mandate has been regularly renewed, most recently in 1990, for a term of two years.

Definition

The Special Rapporteur has given in his reports a tentative definition of summary or arbitrary executions as:

The deprivation of life as a result of a sentence imposed by a procedure in which the due process of law and in particular the minimum guarantees as set out in articles 6, 14 and 15 of the International Covenant on Civil and Political Rights and the safeguards guaranteeing protection of the rights of those facing the death penalty adopted by the Economic and Social Council in resolution 1984/50 of 25 May 1984 have not been respected;

The deprivation of life as a result of killings carried out by order of a Government or with its complicity, tolerance or acquiescence, without any judicial or legal process;

The deprivation of life as a result of abuse or excessive use of force by law enforcement officials;

The deprivation of life of civilians by members of the armed or security forces in violation of law governing the state of war or armed conflict.

They are also referred to as extra-legal executions or killings since such deprivation of life takes place outside the judicial or legal process and at the same time is illegal under national and international law.

Phenomena

In his first report to the Commission on Human Rights in 1983, Mr. Wako estimated that at least two million people had died as a result of such executions in the previous 15 years.

Cases had been reported from almost all parts of the world, and in some countries, there was a consistent pattern of executions. All social classes were affected, as well as religious groups and ethnic minorities. Neither the young, nor the elderly nor women were spared.

The common factor was that the victims were in opposition—or were simply imagined to be opposed—to those in power or to some aspects of the political or economic policies of the day. Governments were held responsible for summary and arbitrary executions in violation of their own constitutions and laws.

Summary and arbitrary executions occur most frequently in states of internal disturbance where governments are confronting with other forces in the country concerned, or where groups holding different religious or political beliefs are in conflict. They are a feature of situations where states of emergency have been declared, as well as after successful—or failed—attempts to overthrow governments.

Where there is political tension, even without a state of emergency, killings of that nature occur, either to eliminate targeted individuals, or more indiscriminately during demonstrations and strikes.

The excessive or illegal use of force by law enforcement agents, and deaths in custody are two other manifestations of the problem.

Summary and arbitrary executions are closely related to, and are often a direct consequence of, other serious human rights violations. They are often preceded by the enforced or involuntary disappearance of persons or torture and other forms of cruel, inhuman or degrading treatment or punishment, arbitrary arrest or detention. They also occur in situations where denial of freedom of thought, conscience and religion, and/or intolerance on the grounds of race, colour, sex, language, religion or social origin are widespread and serious.

An evolving mandate

Economic and Social Council resolution 1982/35 which established the mandate of the Special Rapporteur did not provide an ex-

plicit definition or scope of his mandate. According to the resolution, the Special Rapporteur was "to examine the questions related to summary or arbitrary executions" and "to submit a comprehensive report to the Commission on Human Rights on the occurrence and extent of the practice of such executions together with his conclusions and recommendations". From 1985 onwards, the mandate of the Special Rapporteur was strengthened to enable him to take a more active role. The Special Rapporteur was given authority "to respond effectively to information that comes before him, in particular when a summary or arbitrary execution is imminent or threatened."

The Special Rapporteur initially categorized the phenomenon of summary or arbitrary executions into four groups, namely those relating to judicial or other proceedings, those in states of war, armed conflict or emergency, those relating to law enforcement and those in detention or custody. Although the resolutions leading to the mandate of the Special Rapporteur seemed to limit the concept of summary or arbitrary executions to acts or omissions attributable to Governments or government agents, the Special Rapporteur considered that further thought should be given to the responsibility of non-governmental groups for acts or omissions leading to deprivation of life in a manner equivalent to that resulting from summary or arbitrary executions.

As the mandate of the Special Rapporteur has been renewed on a regular basis by the Economic and Social Council, it gradually came to define its terms of reference through practice and the Special Rapporteur has come to deal with the following situations:

1. Allegations of executions or deaths which might have taken place in the absence of the safeguards designed to protect the right to life embodied in various international instruments, such as the International Covenant on Civil and Political Rights (articles 4, 6, 7, 9, 14 and 15), the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolution 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977), the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46 of 10 December 1984), the Safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50) and the Principles of the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary

Executions (Economic and Social Council resolution 1989/65). These allegations received the Special Rapporteur's concern:

(*a*) Actual or imminent executions:

(i) Without a trial,

(ii) With a trial but without safeguards designed to protect the rights of the defendant as provided for in articles 14 and 15 of the above-mentioned Covenant;

(*b*) Deaths which took place:

(i) As a result of torture or cruel, inhuman or degrading treatment during detention,

(ii) As a result of abuse of force by police, military or any other governmental or quasi-governmental forces,

(iii) As a result of assault by paramilitary groups under official control,

(iv) As a result of assault by individuals or paramilitary groups not under official control, but acting with official collusion or connivance.

2. In addition to the above, the Special Rapporteur has come to take action concerning cases of death threats allegedly made by:

(i) Members of police, military or any other governmental or quasi-governmental forces;

(ii) Individuals or paramilitary groups under official control or acting with official collusion or connivance.

The Special Rapporteur receives a large and increasing number of appeals, letters, reports and other information materials from governments, non-governmental organizations and individuals, providing him with information on the occurrence of summary or arbitrary executions. All information received is examined and analysed by the Special Rapporteur.

Four main avenues are open to the Special Rapporteur in carrying out his mandate. The first is to communicate allegations of summary or arbitrary executions to the Governments concerned, and to ask for information, particularly on official investigations, trial proceedings, and the prosecution and punishment of those responsible for such killings.

Secondly, where the executions are imminent or threatened, he sends urgent messages to the Governments concerned, asking for the compliance with the above-mentioned international standards and for

Thirdly, the Special Rapporteur visits countries, at the invitation of their governments, with regard to alleged occurrence of summary, arbitrary or extra-legal executions.

Fourthly, he participates in seminars or conferences which touch on his subject with a view to increasing awareness among Governments and non-governmental organizations of his role.

Fifthly, the Special Rapporteur also holds joint hearings on particular situations. For example, he has regularly held joint hearings with the *Ad Hoc* Working Group of Experts in Southern Africa.

Finally, he regularly meets representatives of Governments for consultations on the phenomenon in general as well as on specific cases.

Replies from Governments in response to the Special Rapporteur's inquiries range from detailed information on the cases reported to complete denials. While an increasing number of Governments co-operate with the Special Rapporteur by responding to his inquiries, many of his communications still remain unanswered.

Reports by the Special Rapporteur

The Special Rapporteur, on the basis of the resolutions adopted by the Economic and Social Council and the Commission on Human Rights, has annually submitted a report to the Commission on Human Rights. His reports contain a description of his activities, communications of allegations of summary or arbitrary executions to Governments concerned, summaries of Governments' replies, an analysis of the phenomenon of summary or arbitrary executions as well as conclusions and recommendations. His report is publicly discussed by the Commission on Human Rights at its annual session, a discussion in which representatives of both Governments and non-governmental organizations actively participate and which so far has always led to the adoption of a resolution on the subject.

Concerted effort

The Commission on Human Rights, through the activities of the Special Rapporteur, co-ordinates its efforts with the Committee on Crime Prevention and Control, and the periodic United Nations Congresses on the Prevention of Crime and Treatment of Offenders, which

also deal with the question of extra-legal, summary and arbitrary executions. Within the United Nations Secretariat, the Centre for Human Rights in Geneva co-operates closely with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs in Vienna.

Responses

Most human communities have witnessed and suffered mass killings and individual assassinations. The Special Rapporteur on Summary or Arbitrary Executions, year by year, deals with an increasing number of appeals to halt executions, and of reports of executions and killings that have taken place. Some of the widespread trends have been analysed by the Special Rapporteur in his reports. In certain countries exceptions to the law have been made, which have undermined the guarantees of the right to life in legislation and national constitutions. In some countries, an increase in the number of offences punishable by death, as well as accelerated trial procedures, the retroactive enforcement of new laws and direct action against suspected criminals have been among the measures taken to curb a rising crime rate, thus eroding respect for the right to life.

In some countries, a wide gap remains between the legal and constitutional safeguards of the right to life and the *de facto* situation. There are instances where national laws are still in conflict with international human rights covenants, thus leaving the door open to summary or arbitrary executions, and others where such executions occur even though the law provides all necessary safeguards.

In recent years the phenomenon of "death squads" has come to the forefront. Whether extremist groups which are responsible for killings act independently or with the support, tolerance or connivance of Governments does not, in the Special Rapporteur's view, alter the fact that Governments have the duty and responsibility to see that the right to life is guaranteed and protected from anyone who attempts to violate it.

Action

The Special Rapporteur has pointed out that one way in which Governments can show they want to eliminate summary or arbitrary

executions is by thoroughly investigating, holding inquests, prosecuting and punishing those found guilty.

Most countries have legal, judicial and administrative systems for investigating the cause of death in unnatural, unusual or suspicious circumstances. However, where death is caused by the police, the army or other law enforcement agencies, or persons acting under their protection, such investigations have in many of the country situations examined by the Special Rapporteur either come to a halt at the barracks gate or have otherwise been inconclusive.

He proposed that international standards be designed to ensure that investigations are made into all cases of suspicious death and in particular those at the hands of law enforcement agencies. Prompt, impartial and thorough investigations should be made into the cause and manner of death.

Complainants, witnesses and the investigators, and their families must enjoy maximum protection by the State. Families of victims and their legal counsel should be able to participate in the proceedings and to have access to information, and the findings should be published.

Through the efforts of United Nations bodies and non-governmental organizations an important step forward was taken by the Economic and Social Council in 1989 when it adopted resolution 1989/65 endorsing the "Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions", as recommended by the United Nations Committee on Crime Prevention and Control. The Economic and Social Council recommended in the resolution that Governments take the principles into account in their national legislation and practices, and bring them to the attention of law enforcement and criminal justice officials, military personnel, and lawyers, as well as members of executive and legislative bodies and the general public.

Meanwhile, the United Nations has published a manual on the effective prevention and investigation of extra-legal, arbitrary and summary executions which includes detailed model guidelines for autopsies. The manual, adapted largely from the "Minnesota Protocol", is the result of the co-operative efforts undertaken by an international group of experts in forensic science, lawyers, human rights experts and others at the initiative of the Minnesota Lawyers International Human Rights Committee.

Human rights training programmes for judges, prosecutors, law enforcement officers and military personnel are being organized by the Centre for Human Rights for specific countries as well as on a regional basis. Advisory services have been made available by the Centre to assist Governments to deal with serious human rights problems in their countries.

The Special Rapporteur has drawn attention to the needs of countries emerging from periods of authoritarian rule for international assistance in restoring respect for human rights, in particular the right to life. In his recommendations he has proposed that Governments emphasize the importance of the right to life in the training of all law enforcement personnel. Governments should also:

Ratify international human rights instruments, such as the International Covenant on Civil and Political Rights and its Optional Protocol, and the Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment;

Review their laws and regulations to take stronger preventive measures against death as a result of the illegal or excessive use of force by security, law enforcement or other government officials;

Review their machinery for investigating suspicious deaths so that impartial, independent inquiries are made, with adequate autopsies;

Review trial procedures, in particular those of special tribunals, to ensure that there are proper safeguards for the rights of the accused.

He has also proposed greater efforts on the part of Governments and international organizations, acting together through assistance programmes, to restore or raise the level of respect for human rights.

World awareness

The significant change of the past decade is in public opinion. The veil of secrecy and deceit which shrouded summary and arbitrary executions has been lifted, and the world is aware, as never before, of the nature, the scale and the authors of the killings—whether they are a result of direct government action, perpetrated by official agents independently or by groups outside government control or with the tacit approval of the authorities.

Summary and arbitrary executions still continue and will not easily be stopped. However, the force of public opinion and the growing pace of international action—the persistent, often concerted, efforts of

the United Nations, regional and national human rights bodies and non-governmental organizations—hold out the hope that it will become increasingly difficult to deprive people of their lives in defiance of international human rights standards, and for those who are responsible, to escape punishment.

How to bring information or appeals to the Special Rapporteur

Any individuals, groups, organizations who have reliable knowledge on the occurrence of summary or arbitrary executions, imminent executions, or cases of death threats may communicate such information to the Special Rapporteur by letter, cable, telex or facsimile. Basic data, such as full names of the victims, date and place of the occurrence, are of vital importance. In order for the Special Rapporteur to be able to evaluate the case or incident it is equally important that the communication provide a description of the circumstances of the killing or execution and of its background as well as an indication of the witnessed or suspected perpetrators. The address is:

Special Rapporteur on Summary or Arbitrary Executions
c/o Centre for Human Rights
United Nations Office at Geneva
1211 Geneva 10
Switzerland

Telex: 41 29 62
Facsimile: 733 98 79

Notes

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